

# **Exhibit 1**

## CONTRACT

**THIS CONTRACT** (the "Contract") is made as of the \_\_\_ day of \_\_\_\_\_, 2013, by and between [NAME AND ADDRESS] (the "Contractor"), and the **MARYLAND STATE TREASURER'S OFFICE**, 80 Calvert Street, Annapolis, Maryland 21401 (the "Office"), on behalf of the **DEPARTMENT OF LABOR, LICENSING AND REGULATION, DIVISION OF UNEMPLOYMENT INSURANCE** (the "DLLR/DUI"), offices of the **STATE OF MARYLAND** (the "State").

**IN CONSIDERATION OF** the premises and the covenants herein contained, the parties agree as follows:

### ARTICLE I - SCOPE OF SERVICES

The Office hereby engages the Contractor to perform the services set forth below:

- 1.1. General Services. The Contractor shall provide Electronic Payment Card Services as described in this Contract, which includes the following exhibits:

Exhibit	The Office's Request for Proposals ("RFP") for Electronic Payment Card Services, RFP #DLLR-EPC-01172013;
Exhibit	Contractor's Proposal dated ____;
Exhibit	Contractor's Cardholder Services Cost/Fees Worksheet dated ____;
Exhibit	Contractor's Presentation dated ____;
Exhibit	Collateral Security Agreement dated ____;
Exhibit	Designation of Depository dated ____;
Exhibit	Bid/Proposal Affidavit, Living Wage Affidavit, Contract Affidavit and Investment Activities in Iran Certification; and
Exhibit	Contractor's "Bank Operating Documents," dated _____.

- 1.2. If there are any inconsistencies between this Contract and the Exhibits, this Contract shall control. If there is any conflict among the Exhibits, Exhibit A, shall control.
- 1.3. The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract. No other order, statement or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a

dispute under Section 4.5., Disputes. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

## **ARTICLE II - TERM**

- 2.1. The initial term of this Contract shall be for the period beginning April 1, 2013 and ending March 21, 2016.
- 2.2. In addition there shall be two additional two-year renewal options, which may be exercised at the sole discretion of the Office.
- 2.3. After the end of the Contract term, should a new contract be awarded to a contractor other than the incumbent, the Contract shall be deemed to be extended, Contractor shall continue to perform Contract services, and Contractor shall continue to receive the compensation specified in the Contract for such services, until such time as the transition to the new contractor is complete. Contractor shall also assist the Office during any transition period to a new contractor and provide all necessary information and data to any subsequent contractor.
- 2.4. The provisions of Sections 4.1, 4.5, 4.21, 4.22, 4.25 and 4.26 of this Contract shall survive termination of this Contract for any reason.

## **ARTICLE III - CONSIDERATION, PAYMENT AND PERFORMANCE**

- 3.1. Contractor shall charge only the cardholder services costs/fees as described on Contractor's Cardholder Services Costs/Fees Worksheet as attached hereto as Exhibit \_\_\_ and any Worksheet Supplement as attached hereto as Exhibit \_\_\_. No other costs/fees shall apply to cardholders, the State, the Office or DLLR/DUI. These costs/fees shall not be adjusted during the term of this Contract including any renewal option periods.

## **ARTICLE IV – GENERAL CONDITIONS**

### **4.1. Liability**

The Contractor agrees to assume full responsibility for any and all damage to the property of the Office, both real and personal, which results from or arises in connection with, the performance of this Contract.

The Contractor hereby agrees to indemnify and save harmless the State against all claims, damages, costs, losses and liabilities whatsoever, for any and all injury to persons and property that may arise out of the performance of this Contract.

The Contractor agrees to maintain adequate insurance coverage in order to fulfill responsibility under this section.

#### 4.2. Tax Exemption

The State is generally exempt from Federal Excise Taxes, Maryland Sales and Use Taxes, District of Columbia Sales Tax and Transportation Taxes. Exemption certificates shall be completed upon request.

#### 4.3. Subcontracting; Assignment

The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the State, nor may the Contractor sell, transfer, or otherwise assign its obligations under this Contract, or any portion thereof, or any of its rights or obligations hereunder, without the prior written approval of the State; provided, however, that the Contractor may subcontract services under or make an assignment of this Contract to an affiliate of the Contractor that is fully capable of performing such services if the Contractor retains full responsibility for the Contract. Any such subcontract or assignment shall be subject to any terms and conditions that the Office deems necessary to protect the interest of the State. The Office shall not be responsible for the fulfillment of the Contractor's obligations to subcontractors.

#### 4.4. Non-Hiring of Officials and Employees

No official or employee of the State of Maryland, as defined under State Government Article, §15-102, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall during the pendency and term of this Contract and while serving as an official or employee of the State become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

#### 4.5. Disputes

This Contract shall be subject to the provisions of Title 15, Subtitle 2 of the State Finance and Procurement Article of the Annotated Code of Maryland (Dispute Resolution), and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision.

#### 4.6. Maryland Law Prevails

The provisions of this Contract shall be governed by the Laws of Maryland.

#### 4.7. Amendments

This Contract, including the exhibits hereto, constitutes the entire agreement between the parties and all other communications prior to its execution, whether written or oral, with reference to the subject matter of this Contract are superseded by this Contract. Any amendment to this Contract must first be approved in writing by the Procurement Officer,

subject to any additional approvals required by State law. No amendment to this Contract shall be binding unless so approved and unless it is in writing and signed by the party to be charged.

#### 4.8. Nondiscrimination in Employment

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry or disability of a qualified individual with a disability; (b) to include a provision similar to that contained in subsection (a), above, in any subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

#### 4.9. Commercial Nondiscrimination Clause

4.9.1. As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

4.9.2. As a condition of entering into this Contract, upon the Maryland Human Relations Commission's request, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past 4 years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to

provide any documents relevant to any investigation that is requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions.

#### 4.10. Contingent Fee Prohibition

The Contractor, architect, or engineer (as applicable) warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Contractor, architect, or engineer, to solicit or secure this Contract, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this Contract.

#### 4.11. Living Wage Requirements

A solicitation for services under a State contract valued at \$100,000 or more may be subject to Title 18, State Finance and Procurement (SFP) Article, Annotated Code of Maryland.

Contractors and Subcontractors subject to the Living Wage Law shall pay each covered employee at least \$12.28 per hour, if State contract services valued at 50% or more of the total value of the contract are performed in the Tier 1 Area. If State contract services valued at 50% or more of the total Contract value are performed in the Tier 2 Area, an Offeror shall pay each covered employee at least \$9.23 per hour. The specific Living Wage rate is determined by whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State. The Tier 1 Area includes Montgomery, Prince George's, Howard, Anne Arundel, and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. In the event employees who perform the services are not located in the State, the head of the unit responsible for a State contract pursuant to §18-102 (d) shall assign the tier based upon where the recipients of the services are located.

This Contract has been deemed to be a Tier 1 contract.

#### 4.12. Multi-Year Contracts Contingent upon Appropriations

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be cancelled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any non-

recurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

#### 4.13. Termination for Default

If the Contractor fails to fulfill its obligation under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State shall pay the Contractors fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

#### 4.14. Termination for Convenience

The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination and all reasonable costs associated with termination of the Contract. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A(2).

#### 4.15. Delays and Extensions of Time

The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.

Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another contractor in the performance of a Contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

#### 4.16. Variations in Estimated Quantities

No equitable adjustment shall be permitted in favor of either the State or the Contractor in the event that the quantity of any pay item in this Contract is an estimated quantity and the actual quantity of such pay item varies from the estimated quantity stated in the Contract.

#### 4.17. Suspension of Work

The Procurement Officer unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State.

#### 4.18. Pre-Existing Regulations

In accordance with the provisions of §11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR Title 21) in effect on the date of execution of this Contract are applicable to this Contract.

#### 4.19. Financial Disclosure

The Contractor shall comply with the provisions of §13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more, shall, within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

#### 4.20. Political Contribution Disclosure

The Contractor shall comply with the Election Law Article § 14-101 – 14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the Contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.



#### 4.21. Retention of Records/Audit

The Contractor shall retain and maintain all records and documents relating to this Contract for three years after final payment by the State hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or his designee, at all reasonable times.

#### 4.22. Compliance with Laws

The Contractor hereby represents and warrants that:

- 4.22.1. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time, hereafter may be necessary to remain so qualified;
- 4.22.2. It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- 4.22.3. It shall comply with all federal, State and local laws, regulations and ordinances applicable to its activities and obligations under this Contract; and
- 4.22.4. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

#### 4.23. Liability for Loss of Data

In the event of loss of any data or records necessary for the performance of this Contract where such loss is due to the error or negligence of the Contractor, the Contractor shall be responsible, irrespective of cost to the Contractor, for recreating such lost data or records.

#### 4.24. Cost and Price Certification

- 4.24.1. The Contractor by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as a mutually determined specified date prior to the conclusion of any price discussions or negotiations for:
  - (1) A negotiated contract, if the total contract price is expected to exceed \$100,000, or a smaller amount set by the procurement officer; or
  - (2) A change order or contract modification, expected to exceed \$100,000, or a smaller amount set by the procurement officer.

4.24.2. The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current.

4.25. Ownership of Documents and Materials

The Contractor agrees that all documents and materials including, but not limited to, reports, drawings, studies, specifications, estimates, maps, photographs, designs, graphics, mechanical, artwork, and computations prepared by or for it under the terms of this Contract shall at anytime during the performance of the services be made available to the State upon request by the State and shall become and remain the exclusive property of the State upon termination or completion of the services. The State shall have the right to use same without restriction or limitation and without compensation to the Contractor other than that provided by this Contract. The State shall be the owner for purposes or copyright, patent or trademark registration.

4.26. Patents, Copyrights and Trade Secrets

4.26.1. If the Contractor furnishes any design, device, material, process or other item, which is covered by a patent, or copyright or which is proprietary to or a trade secret of another, Contractor shall obtain the necessary permission or license to use such item.

4.26.2. Contractor will defend or settle, at its own expense, any claim or suit against the State alleging that any such item furnished by Contractor infringes any patent, trademark, copyright, or trade secret. Contractor also will pay all damages and costs that by final judgment may be assessed against the State due to such infringement and all attorney fees and litigation expenses reasonably incurred by the State to defend against such a claim or suit. The obligations of this paragraph are in addition to those stated in paragraph 4.26.3. below.

4.26.3. If any product(s) furnished by Contractor become, or in Contractor's opinion are likely to become, the subject of a claim of infringement, Contractor will, at its option: (1) procure for the State the right to continue using the applicable item; (2) replace the product with a non-infringing product substantially complying with the item's specifications; or (3) modify the item so it becomes non-infringing and performs in a substantially similar manner to the original item.

4.27. Confidentiality

Subject to the Maryland Public Information Act and any other applicable laws, including all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems) shall be held in absolute confidence by the other party. Each party

shall, however, be permitted to disclose relevant confidential information to its officers, agents and employees to the extent that such disclosure is necessary for the performance of their duties under this Contract, provided the data may be collected, used, disclosed, stored and disseminated only as provided by and consistent with the law and the confidentiality provisions of the RFP. The provisions of this section shall not apply to information that (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already in the possession of such party; (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information; or (e) which such party is required to disclose by law.

#### **ARTICLE V - NOTICES**

- 5.1. All notices required to be given by one party to the other hereunder shall be in writing and shall be addressed as follows:

If to the Office:           Procurement Officer  
                                  Maryland State Treasurer's Office  
                                  Louis L. Goldstein Treasury Building  
                                  80 Calvert Street  
                                  Annapolis, Maryland 21401

If to the Department of Labor, Licensing and Regulation:  
                                  Jim McVicker  
                                  Deputy Director, Contributions Division  
                                  Maryland Department of Labor, Licensing and Regulation  
                                  Office of Unemployment Insurance  
                                  1100 North Eutaw Street  
                                  Baltimore, Maryland 21201-2201

If to the Contractor: \_\_\_\_\_  
                                  \_\_\_\_\_

#### **ARTICLE VI - ADMINISTRATION**

- 6.1. The work to be accomplished under this Contract shall be performed under the direction of the Contract Officer, Deputy Director of the Contributions Division. All matters relating to the administration of this Contract shall be referred to the Procurement Officer for determination.

**ARTICLE VII - REPRESENTATIONS**

7.1. Each party to this Contract represents and warrants to the other that it has full right, power, and authority to execute this Contract.

**IN WITNESS WHEREOF**, the parties have executed this Contract as of the date hereinabove set forth.

**ATTEST:**

**[FIRM NAME]**

\_\_\_\_\_

By: \_\_\_\_\_

**WITNESS:**

**MARYLAND STATE TREASURER'S  
OFFICE**

\_\_\_\_\_

By: \_\_\_\_\_

Nancy K. Kopp  
State Treasurer

**WITNESS:**

\_\_\_\_\_

By: \_\_\_\_\_

Bernadette T. Benik  
Chief Deputy Treasurer

**ACKNOWLEDGED AND ACCEPTED:  
DEPARTMENT OF LABOR,  
LICENSING AND REGULATION,  
DIVISION OF UNEMPLOYMENT  
INSURANCE**

By: \_\_\_\_\_

James A. McVicker  
Deputy Director, Contributions  
Division Unemployment Insurance

Approved for form and legal sufficiency  
for the Maryland State Treasurer's Office:

\_\_\_\_\_

Melanie Mayo West  
Assistant Attorney General